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7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Petition to Revoke
11 Probation Against,

Case No. 2006-228

PETITION TO REVOKE PROBATION

12 **DUANE GARY THURSTON**
13 **2250 Oak Hills Circle, # 116**
Pittsburg, California 94565
14 **Registered Nurse License No. RN 527624**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Petition to Revoke
20 Probation solely in her official capacity as the Interim Executive Officer of the Board of
21 Registered Nursing ("Board"), Department of Consumer Affairs.
22 Registered Nurse License

23 2. On or about October 28, 1996, the Board issued Registered Nurse License Number
24 RN 527624 to Duane Gary Thurston ("Respondent"). The registered nurse license was in effect
25 at all times relevant to the charges brought herein and will expire on October 31, 2010, unless
26 renewed.

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1 **Prior Discipline**

2 3. In a disciplinary action entitled "In the Matter of Accusation Against Duane Gary
3 Thurston," Case No. 2006-228, the Board of Registered Nursing, issued a Decision, effective
4 August 1, 2007, in which Respondent's Registered Nurse License Number 527624 was revoked.
5 However, the revocation was stayed and Respondent was placed on probation for a period of
6 three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A
7 and is incorporated by reference.

8 **STATUTORY PROVISIONS**

9 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
10 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
11 inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of
12 the Nursing Practice Act.

13 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall
14 not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
15 licensee or to render a decision imposing discipline on the license. Under Code section 2811,
16 subdivision (b), the Board may renew an expired license at any time within eight years after the
17 expiration.

18 **PETITION**

19 6. Grounds exist for revoking the probation and reimposing the order of revocation of
20 Respondent's Registered Nurse License No. 527624. Condition 12 of the Decision states:
21 If Respondent violates the conditions of his probation, the Board after giving the Respondent
22 notice and an opportunity to be heard, may set aside the stay order and impose the stayed
23 discipline (revocation/suspension) of the Respondent's license.

24 If during the period of probation, an accusation or petition to revoke probation has been
25 filed against Respondent's license or the Attorney General's Office has been requested to prepare
26 an accusation or petition to revoke probation against Respondent's license, the probationary
27 period shall automatically be extended and shall not expire until the accusation or petition has
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1 been acted upon by the Board.

2 7. Respondent has violated the Probation Program, as more particularly set forth in
3 the following paragraphs:

4 **FIRST CAUSE TO REVOKE PROBATION**
5 (Failure to Comply with Cost Recovery Term)

6 8. At all times after the effective date of Respondent's probation, Condition 11,
7 stated:

8 Respondent shall pay to the Board costs associated with its investigation
9 and enforcement pursuant to Business and Professions Code section 125.3
10 in the amount of \$1,500.00. Respondent shall be permitted to pay these
11 costs in a payment plan approved by the Board, with payments to be
completed no later than three months prior to the end of the probation
term.

12 If Respondent has not complied with this condition during the probationary term,
13 and Respondent has presented sufficient documentation of his good faith efforts to comply with
14 this condition, and if no other conditions have been violated, the Board, in its discretion, may
15 grant an extension of Respondent's probation period up to one year without further hearing in
16 order to comply with this condition. During the one year extension, all original conditions of
17 probation will apply.

18 9. Respondent's probation is subject to revocation because he failed to comply with
19 Probation Condition 11 referenced above. The facts and circumstances regarding this violation
20 are that Respondent failed to pay cost recovery in full no later than three months prior to the end
21 of probation. The last payment was received on April 23, 2008, and the current balance is
22 \$1,144.00.

23 **SECOND CAUSE TO REVOKE PROBATION**
24 (Failure to Submit Written Reports)

25 10. At all times after the effective date of Respondent's probation, Condition 5, stated:

26 Respondent, during the period of probation, shall submit or cause to be
27 submitted such written reports/declarations and verification of actions
28 under penalty of perjury, as required by the Board. These
reports/declarations shall contain statements relative to Respondent's

1 compliance with all the conditions of the Board's Probation Program.
2 Respondent shall immediately execute all release of information forms as
3 may be required by the Board or its representatives.

4 11. Respondent's probation is subject to revocation because he failed to comply with
5 Probation Condition 5, referenced above. The facts and circumstances regarding this violation
6 are that Respondent failed to provide the Board with the following forms:

- 7 a. On-Going Treatment Verification form due September 30, 2007.
8 b. On-Going Treatment Verification form due October 9, 2008.
9 c. On-Going Treatment Verification form due October 23, 2008.

10 Further, Respondent failed to provide the Board with quarterly reports for the following
11 quarters:

- 12 April 1, 2009-June 30, 2009, due July 7, 2009
13 July 1, 2009-September 30, 2009, due October 7, 2009
14 October 1, 2009-December 31, 2009, due January 7, 2010
15 January 1, 2010-March 31, 2010, due April 7, 2010.

16 **THIRD CAUSE TO REVOKE PROBATION**
17 (Failure to Practice Nursing as Required)

18 12. At all times after the effective date of Respondent's probation, Condition 6, stated:

19 Respondent, during the period of probation, shall engage in the practice of
20 registered nursing in California for a minimum of 24 hours per week for 6
consecutive months or as determined by the Board.

21 For purposes of compliance with this section, "engage in the practice of registered
22 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work
23 in any non-direct patient care position that requires licensure as a registered nurse.

24 The Board may require that advanced practice nurses engage in advanced practice nursing for a
25 minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

26 If Respondent has not complied with this condition during the probationary term, and
27 Respondent has presented sufficient documentation of his good faith efforts to comply with this
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1 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
2 extension of Respondent's probation period up to one year without further hearing in order to
3 comply with this condition. During the one year extension, all original conditions of probation
4 shall apply.

5 13. Respondent's probation is subject to revocation because he failed to comply with
6 Probation Condition 6, referenced above. The facts and circumstances regarding this violation
7 are that Respondent failed to engage in the practice of registered nursing for a minimum of 24
8 hours per week for 6 consecutive months. Respondent had two employment offers; however,
9 both were rescinded by the employer.

10 **FOURTH CAUSE TO REVOKE PROBATION**
11 (Failure to Complete Course Work)

12 14. At all times after the effective date of Respondent's probation, Condition 10,
13 stated:

14 Respondent, at his own expense, shall enroll and successfully complete a
15 course(s) relevant to the practice of registered nursing no later than six
16 months prior to the end of her probationary term.

16 Respondent shall obtain prior approval from the Board before enrolling in
17 the course(s). Respondent shall submit to the Board the original
18 transcripts or certificates of completion for the required course(s). The
19 Board shall return the original documents to Respondent after
20 photocopying them for its records.

21 15. Respondent's probation is subject to revocation because he failed to comply with
22 Probation Condition 10, referenced above. The facts and circumstances regarding this violation
23 are that Respondent failed to complete the following courses no later than six months prior to the
24 end of his probationary term:

25 a. Failed to complete 12-16 hours of course work for Category 1-5 to include
26 Nursing Diagnosis; Pathophysiology Assessment; Tests and Treatments; Pharmacology; Patient
27 Education and Medication Management.

28 b. 4-6 hours of Legal Aspects of Nursing.

c. 2-4 hours of Stress/Anger Management.

1 **FIFTH CAUSE TO REVOKE PROBATION**

2 (Failure to Provide Proof of His Participation in Therapy or Counseling Program)

3 16. At all times after the effective date of Respondent's probation, Condition 15,
4 stated:

5 Respondent, at his expense, shall participate in an on-going counseling
6 program until such time as the Board releases him from this requirement
7 and only upon the recommendation of the counselor. Written progress
8 reports from the counselor will be required at various intervals.

9 17. Respondent's probation is subject to revocation because he failed to comply with
10 Probation Condition 15, referenced above. The facts and circumstances regarding this violation
11 are that Respondent failed to provide the Board with proof of his on-going participation in
12 therapy or counseling by failing to provide the Board with the On-Going Treatment Verification
13 forms due on September 30, 2007, October 9, 2008, and October 23, 2008.

14 **SIXTH CAUSE TO REVOKE PROBATION**

15 (Failure to Comply with the Probation Program)

16 18. At all times after the effective date of Respondent's probation, Condition 2 stated,
17 in pertinent part:

18 Respondent shall fully comply with the terms and conditions of the
19 Probation Program established by the Board and cooperate with
20 representatives of the Board in its monitoring and investigation of the
21 Respondent's compliance with the Probation Program. Respondent shall
22 inform the Board in writing within no more than 15 days of any address
23 change and shall at all times maintain an active, current license status with
24 the Board, including during any period of suspension.

25 19. Respondent's probation is subject to revocation because he failed to comply with
26 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
27 are that Respondent failed to comply with the Board's Probation Program, as more particularly
28 set forth in paragraphs 9, 11, 13, 15 and 17 above.

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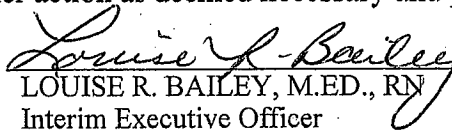
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PRAAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2006-228 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. RN 527624 issued to Duane Gary Thurston;
2. Revoking or suspending Registered Nurse License No. RN 527624, issued to Duane Gary Thurston; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: June 25, 2010


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2006-228

DUANE GARY THURSTON
1036 Oak Grove Road, Apt. 86
Concord, California 94518

Registered Nurse License No. 527624

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 1, 2007.

It is so ORDERED July 2, 2007.

LaThane W. Tate

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

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CLERK

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
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7 Facsimile: (510) 622-2270

8 Attorneys for Complainant

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

Case No. 2006-228

13 **DUANE GARY THURSTON**
1036 Oak Grove Road, Apt. 86
14 Concord, California 94518

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Registered Nurse License No. 527624

16 Respondent.

17
18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
23 the Board of Registered Nursing. She brought this action solely in her official capacity and is
24 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Shana
25 A. Bagley, Deputy Attorney General.

26 2. Respondent Duane Gary Thurston is represented in this proceeding by
27 attorney Seth P. Chazin, whose address is: 1164 Solano Avenue, Albany, California 94706.

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3. On or about October 28, 1996, the Board of Registered Nursing issued Registered Nurse License No. 527624 to Duane Gary Thurston (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2006-228 and will expire on May 31, 2008, unless renewed.

JURISDICTION

4. Accusation No. 2006-228 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 30, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2006-228 is attached as Exhibit "A" and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2006-228. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 2006-228.

4 9. Respondent agrees that his Registered Nurse License is subject to
5 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
6 Disciplinary Order below.

7 CIRCUMSTANCES IN MITIGATION

8 10. Respondent has never been the subject of any disciplinary action. He is
9 admitting responsibility at an early stage in the proceedings.

10 CONTINGENCY

11 11. This stipulation shall be subject to approval by the Board of Registered
12 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the
13 Board of Registered Nursing may communicate directly with the Board regarding this stipulation
14 and settlement, without notice to or participation by Respondent or his counsel. By signing the
15 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
16 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
17 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
18 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
19 action between the parties, and the Board shall not be disqualified from further action by having
20 considered this matter.

21 12. The parties understand and agree that facsimile copies of this Stipulated
22 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
23 force and effect as the originals.

24 13. In consideration of the foregoing admissions and stipulations, the parties
25 agree that the Board may, without further notice or formal proceeding, issue and enter the
26 following Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Registered Nurse License No. 527624 issued to
3 Respondent Duane Gary Thurston is revoked. However, the revocation is stayed and Respondent
4 is placed on probation for three (3) years on the following terms and conditions.

5 **Severability Clause.** Each condition of probation contained herein is a separate
6 and distinct condition. If any condition of this Order, or any application thereof, is declared
7 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
8 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
9 and enforceable to the fullest extent permitted by law.

10 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
11 A full and detailed account of any and all violations of law shall be reported by Respondent to
12 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
13 compliance with this condition, Respondent shall submit completed fingerprint forms and
14 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
15 as part of the licensure application process.

16 **Criminal Court Orders:** If Respondent is under criminal court orders, including
17 probation or parole, and the order is violated, this shall be deemed a violation of these probation
18 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

19 2. **Comply with the Board's Probation Program.** Respondent shall fully
20 comply with the conditions of the Probation Program established by the Board and cooperate
21 with representatives of the Board in its monitoring and investigation of the Respondent's
22 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
23 within no more than 15 days of any address change and shall at all times maintain an active,
24 current license status with the Board, including during any period of suspension.

25 Upon successful completion of probation, Respondent's license shall be fully
26 restored.

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1 3. **Report in Person.** Respondent, during the period of probation, shall
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives.

4 4. **Residency, Practice, or Licensure Outside of State.** Periods of
5 residency or practice as a registered nurse outside of California shall not apply toward a reduction
6 of this probation time period. Respondent's probation is tolled, if and when he resides outside of
7 California. Respondent must provide written notice to the Board within 15 days of any change of
8 residency or practice outside the state, and within 30 days prior to re-establishing residency or
9 returning to practice in this state.

10 Respondent shall provide a list of all states and territories where he has ever been
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
12 provide information regarding the status of each license and any changes in such license status
13 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
14 new nursing license during the term of probation.

15 5. **Submit Written Reports.** Respondent, during the period of probation,
16 shall submit or cause to be submitted such written reports/declarations and verification of actions
17 under penalty of perjury, as required by the Board. These reports/declarations shall contain
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation
19 Program. Respondent shall immediately execute all release of information forms as may be
20 required by the Board or its representatives.

21 Respondent shall provide a copy of this Decision to the nursing regulatory agency
22 in every state and territory in which he has a registered nurse license.

23 6. **Function as a Registered Nurse.** Respondent, during the period of
24 probation, shall engage in the practice of registered nursing in California for a minimum of 24
25 hours per week for 6 consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of registered
27 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
28 work in any non-direct patient care position that requires licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
3 Board.

4 If Respondent has not complied with this condition during the probationary term,
5 and Respondent has presented sufficient documentation of his good faith efforts to comply with
6 this condition, and if no other conditions have been violated, the Board, in its discretion, may
7 grant an extension of Respondent's probation period up to one year without further hearing in
8 order to comply with this condition. During the one year extension, all original conditions of
9 probation shall apply.

10 **7. Employment Approval and Reporting Requirements.** Respondent
11 shall obtain prior approval from the Board before commencing or continuing any employment,
12 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
13 performance evaluations and other employment related reports as a registered nurse upon request
14 of the Board.

15 Respondent shall provide a copy of this Decision to his employer and immediate
16 supervisors prior to commencement of any nursing or other health care related employment.

17 In addition to the above, Respondent shall notify the Board in writing within
18 seventy-two (72) hours after he obtains any nursing or other health care related employment.
19 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
20 or separated, regardless of cause, from any nursing, or other health care related employment with
21 a full explanation of the circumstances surrounding the termination or separation.

22 **8. Supervision.** Respondent shall obtain prior approval from the Board
23 regarding Respondent's level of supervision and/or collaboration before commencing or
24 continuing any employment as a registered nurse, or education and training that includes patient
25 care.

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Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses except upon prior approval by the Board. The Board may additionally restrict Respondent

1 from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-
2 case basis.

3 Respondent shall not work as a faculty member in an approved school of nursing
4 or as an instructor in a Board approved continuing education program.

5 Respondent shall work only on a regularly assigned, identified and predetermined
6 worksite(s) and shall not work in a float capacity.

7 If Respondent is working or intends to work in excess of 40 hours per week, the
8 Board may request documentation to determine whether there should be restrictions on the hours
9 of work.

10 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
11 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
12 than six months prior to the end of his probationary term.

13 Respondent shall obtain prior approval from the Board before enrolling in the
14 course(s). Respondent shall submit to the Board the original transcripts or certificates of
15 completion for the above required course(s). The Board shall return the original documents to
16 Respondent after photocopying them for its records.

17 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
18 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
19 amount of \$1,500.00. Respondent shall be permitted to pay these costs in a payment plan
20 approved by the Board, with payments to be completed no later than three months prior to the
21 end of the probation term.

22 If Respondent has not complied with this condition during the probationary term,
23 and Respondent has presented sufficient documentation of his good faith efforts to comply with
24 this condition, and if no other conditions have been violated, the Board, in its discretion, may
25 grant an extension of Respondent's probation period up to one year without further hearing in
26 order to comply with this condition. During the one year extension, all original conditions of
27 probation will apply.

1 12. **Violation of Probation.** If Respondent violates the conditions of his
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
3 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
4 license.

5 If during the period of probation, an accusation or petition to revoke probation has
6 been filed against Respondent's license or the Attorney General's Office has been requested to
7 prepare an accusation or petition to revoke probation against Respondent's license, the
8 probationary period shall automatically be extended and shall not expire until the accusation or
9 petition has been acted upon by the Board.

10 13. **License Surrender.** During Respondent's term of probation, if he ceases
11 practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of
12 probation, Respondent may surrender his license to the Board. The Board reserves the right to
13 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
14 take any other action deemed appropriate and reasonable under the circumstances, without
15 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
16 will no longer be subject to the conditions of probation.

17 Surrender of Respondent's license shall be considered a disciplinary action and
18 shall become a part of Respondent's license history with the Board. A registered nurse whose
19 license has been surrendered may petition the Board for reinstatement no sooner than the
20 following minimum periods from the effective date of the disciplinary decision:

21 (1) Two years for reinstatement of a license that was surrendered for any
22 reason other than a mental or physical illness; or

23 (2) One year for a license surrendered for a mental or physical illness.

24 14. **Mental Health Examination.** Respondent shall, within 45 days of the
25 effective date of this Decision, have a mental health examination including psychological testing
26 as appropriate to determine his capability to perform the duties of a registered nurse. The
27 examination will be performed by a psychiatrist, psychologist, or other licensed mental health
28 practitioner approved by the Board. The examining mental health practitioner will submit a

1 written report of that assessment and recommendations to the Board. All costs are the
2 responsibility of Respondent. Recommendations for treatment, therapy, or counseling made as a
3 result of the mental health examination will be instituted and followed by Respondent.

4 If Respondent is determined to be unable to practice safely as a registered nurse,
5 the licensed mental health care practitioner making this determination shall immediately notify
6 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
7 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
8 practice and may not resume practice until notified by the Board. During this period of
9 suspension, Respondent shall not engage in any practice for which a license issued by the Board
10 is required, until the Board has notified Respondent that a mental health determination permits
11 Respondent to resume practice. This period of suspension will not apply to the reduction of this
12 probationary time period.

13 If Respondent fails to have the above assessment submitted to the Board within
14 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
15 practice until notified by the Board. This period of suspension will not apply to the reduction of
16 this probationary time period. The Board may waive or postpone this suspension only if
17 significant, documented evidence of mitigation is provided. Such evidence must establish good
18 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
19 provided. Only one such waiver or extension may be permitted.

20 15. **Therapy or Counseling Program.** Respondent, at his expense, shall
21 participate in an on-going counseling program until such time as the Board releases him from this
22 requirement and only upon the recommendation of the counselor. Written progress reports from
23 the counselor will be required at various intervals.

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ACCEPTANCE


I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Seth P. Chazin. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 4-10-07


DUANE GARY THURSTON
Respondent

I have read and fully discussed with Respondent Duane Gary Thurston the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/2/07


SETH P. CHAZIN
Attorney for Respondent

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1000-070-010

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 3.28.07

EDMUND G. BROWN JR., Attorney General
of the State of California

SHANA A. BAGLEY
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SF2006400786
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Exhibit A

Accusation No. 2006-228

1 BILL LOCKYER, Attorney General
of the State of California
2 SHANA A. BAGLEY, State Bar No. 169423
Deputy Attorney General
3 California Department of Justice
1515 Clay Street, 20th Floor
4 P.O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2129
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6
7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2006-228

13 DUANE GARY THURSTON
1036 Oak Grove Road, Apt. 86.
Concord, California 94518

ACCUSATION

14 Registered Nurse License No. 527624

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about October 28, 1996, the Board of Registered Nursing issued
23 Registered Nurse License Number 527624 to Duane Gary Thurston (Respondent). The
24 Registered Nurse License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

Statutory Provisions

4. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

5. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . ."

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1 2. Ordering Duane Gary Thurston to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3; and

4 3. Taking such other and further action as deemed necessary and proper.
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6 DATED: 5/18/06
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9 
10 RUTH ANN TERRY, M.P.H., R.N.
11 Executive Officer
12 Board of Registered Nursing
13 Department of Consumer Affairs
14 State of California
15 Complainant
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